

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DARRYL ALLEN BURGESS

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

Case No. C07-5002FDB

ORDER TRANSFERRING SECOND
OR SUCCESSIVE PETITION TO
NINTH CIRCUIT

Petitioner brings a “Motion To Vacate A Void Judgment Lack of Jurisdiction (Fraud By The Court)” asserting, among other things, lack of federal jurisdiction and fatally defective charging instruments. Judgment against Petitioner was entered on April 19, 2002 by the Honorable Jack E. Tanner. Petitioner filed his first 2255 petition on October 19, 2006 and it was denied on November 27, 2006 as being time barred (not filed within one year of the underlying judgment) and without merit. Petitioner’s present motion is essentially a successive 2255 motion. As such, it must transferred to the Ninth Circuit pursuant to Rule 22-3(a), which states:

Application. Any petitioner seeking leave to file a second or successive 2254 petition or 2255 motion in district court must seek leave under 28 U.S.C. §§ 2244 or 2255. An original and five copies of the application must be filed with the Clerk of the Court of Appeals. No filing fee is required. If a second or successive petition or motion, or application for leave to file such a petition or motion, is mistakenly submitted to the district court, **the district court shall refer it to the court of appeals.**

(Emphasis added).

26 | ORDER - 1

1 ACCORDINGLY, IT IS ORDERED: This matter is TRANSFERRED to the Ninth Circuit
2 Court of Appeals and the cause of action in this Court is CLOSED.

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4 DATED this 19th day of January, 2007.

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7 FRANKLIN D. BURGESS
8 UNITED STATES DISTRICT JUDGE
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